

Appendix A - MASTER GRID

June 14, 2004

		Criminal History Score				
	Ranking Group Most Common Offenses	0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
3 Points*	Group 1 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	Group 5 Possession of firearm /CV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
2 Points*	Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
	Group 7 Burglary II 3rd degree sex abuse Negligent homicide Assault w/I to commit mayhem Attempt 2nd degree sex abuse	12 - 36	18 - 42	24 - 48	30 - 54	36 +
1 Point *	Group 8 CPWOL UUV Attempt robbery Attempt burglary 1st degree theft	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Uttering Forgery RSP	1 - 12	3 - 16	5 - 20	7 - 24	9 +
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded boxes – prison or short split permissible.						
Light shaded boxes – prisons, short split, or probation permissible.						

Appendix B -- DRUG GRID

June 14, 2004

		Criminal History Score				
	Ranking Group Most common offenses	0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
2 Points*	Group 1 Distribution w/a PWID w/a	30-72	36-78	41-84	48-90	54+
1 Point*	Group 2 Distribution PWID	12-30	16-36	20-42	24-48	28+
	Group 3 Attempt Distribution Attempt PWID	6-18	10-24	14-30	18-36	22+
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded boxes – prison or short split permissible.						
Light shaded boxes–prisons, short split, or probation permissible.						

Appendix C and C-I -- SENTENCING CHARTS FOR FELONIES

(NOTE: APPENDIX C and C-I MUST BE OPENED AND/OR PRINTED SEPARATELY)

Appendix D - RANKING CHART

(Most Common offenses by Groups)
June 14, 2004

1	Murder 1 ^o w/a Murder 1	Murder of a law enforcement officer 1 ^o
2	Murder 2 ^o w/a Murder 2 ^o	Child sexual abuse 1 ^o w/a Sexual abuse 1 ^o w/a Sexual abuse 1 ^o
3	AWIK w/a Burglary 1 ^o w/a Carjacking w/a	Child sexual abuse 1 ^o Kidnapping w/a Voluntary manslaughter w/a
4	Aggravated assault w/a	Voluntary manslaughter
5	Armed robbery AWI commit any offense w/a AWI commit robbery w/a AWIK Burglary 1 ^o Carjacking Involuntary Manslaughter w/a Involuntary Manslaughter Kidnapping Malicious disfigurement w/a Mayhem w/a Obstruction of justice PFCOV	Child sexual abuse 2 ^o w/a Sexual abuse 2 ^o w/a Sexual abuse 2 ^o AWI commit 1 ^o child sexual abuse w/a AWI commit 2 ^o child sexual abuse w/a AWI commit 1 ^o sexual abuse w/a AWI commit 2 ^o sexual abuse w/a Child sexual abuse, attempt 1 ^o w/a Child sexual abuse, attempt 2 ^o w/a Sexual abuse, attempt 1 ^o w/a Sexual abuse, attempt 2 ^o w/a
6	Aggravated assault Arson APO w/ dangerous weapon ADW AWI commit robbery Attempt robbery w/a Burglary 2 ^o w/a Cruelty to children 1 ^o Malicious disfigurement	Mayhem Robbery AWI commit 1 ^o child sexual abuse AWI commit 2 ^o child sexual abuse AWI commit 1 ^o sexual abuse AWI commit 2 ^o sexual abuse Child sexual abuse, attempt 1 ^o Child sexual abuse 2 ^o Sexual abuse, attempt 1 ^o
7	AWI commit mayhem Burglary 2 ^o Incest Negligent homicide	Sexual abuse, attempt 2 ^o Sexual abuse of a patient 1 ^o Sexual abuse of a ward 1 ^o Sexual abuse 3 ^o
8	APO AWI commit any offense Aggravated assault, attempt Bribery Burglary, attempt CPWL/CDW Cruelty to children 2 ^o DP (f) Extortion Introducing contraband into penal institution Kidnapping, attempt Perjury Procuring Robbery, attempt	Theft 1 ^o Threats Trafficking in stolen property UUV Child sexual abuse, attempt 2 ^o Enticing a child Sexual abuse of a patient, attempt 1 ^o Sexual abuse of a ward, attempt 1 ^o Sexual abuse, attempt 3 ^o Sexual abuse 4 ^o Sexual abuse of a patient 2 ^o Sexual abuse of a ward 2 ^o
9	Bad check Bail reform act (BRA) Blackmail Crack house, maintaining Credit card fraud Embezzlement Escape Escape, attempt False personation of a police officer Forgery Fraud 1 ^o Fraud 2 ^o	Impersonating a public official Obtaining narcotics by fraud Pandering PPW -- second + offense RSP UE (vending machine) Uttering Enticing a child. attempt Sexual abuse, attempt 4 ^o Sexual abuse of a patient, attempt 2 ^o Sexual abuse of a ward, attempt 2 ^o

Appendix E - HISTORICAL DATA FOR MASTER GRID

1/1/1996-6/30/2003

	Criminal History Score				
Ranking group Most common offenses	A	B	C	D	E
Group 1 1st degree murder w/armed 1st degree murder	0.00% 0.00% 360mo. 360-360mo. N=172	0.00% 2.60% 360mo. 360-360mo. N=38	0.00% 0.00% 360mo. 360-360mo. N=24	0.00% 0.00% 360mo. 360-360mo. N=5	0.00% 0.00% N=0
Group 2 2nd degree murder w/ armed 2nd degree murder 1st degree sex abuse w/ armed 1st degree sex abuse	0.00% 1.10% 180mo. 144-240mo. N=178	0.00% 0.00% 180mo. 180-240mo. N=31	0.00% 0.00% 180mo. 180-234mo. N=17	0.00% 0.00% 210mo. 117-240mo. N=4	0.00% 0.00% 150mo. 120-180mo. N=2
Group 3 Voluntary manslaughter w/ armed 1st degree child sex abuse Carjacking while armed	2.10% 3.40% 120mo. 84-180mo. N=146	0.00% 0.00% 108mo. 72-180mo. N=19	0.00% 7.10% 180mo. 162-180mo. N=14	0.00% 0.00% 180mo. 72-240mo. N=3	0.00% 0.00% 120mo. 120-120mo. N=1
Group 4 Aggravated assault w/ armed Voluntary manslaughter	8.00% 4.80% 84mo. 51-120mo. N=125	2.40% 0.00% 60mo. 36-108mo. N=42	0.00% 5.90% 102mo. 52-120mo. N=17	0.00% 0.00% 60mo. 60-60mo. N=1	0.00% 0.00% 20mo. 20-20mo. N=1
Group 5 Possession of firearm /CV Armed robbery Burglary I	3.10% 5.00% 60mo. 60-60mo. N=519	5.20% 1.70% 60mo. 60-60mo. N=172	1.20% 0.00% 60mo. 60-72mo. N=85	4.50% 0.00% 60mo. 60-60mo. N=22	0.00% 0.00% 60mo. 48-72mo. N=9
Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse	23.00% 9.10% 30mo. 18-40mo. N=900	14.10% 7.20% 30mo. 20-40mo. N=249	10.50% 3.90% 36mo. 24-40mo. N=153	7.70% 5.10% 33mo. 20-36mo. N=39	0.00% 0.00% 36mo. 21-48mo. N=5
Group 7 Burglary II 3rd degree sex abuse Negligent homicide	31.00% 5.40% 20mo. 12-27mo. N=129	25.30% 5.10% 24mo. 13-36mo. N=99	16.70% 2.40% 24mo. 21-36mo. N=84	20.80% 4.20% 33mo. 24-51mo. N=24	0.00% 16.70% 24mo. 9-48mo. N=6
Group 8 CPWOL UUV Attempt robbery	44.50% 12.50% 12mo. 8-20mo. N=1847	25.90% 9.10% 12mo. 9-18mo. N=584	21.80% 8.80% 12mo. 10-20mo. N=308	22.90% 7.10% 12mo. 10-20mo. N=70	18.20% 9.10% 12mo. 8-13mo. N=22
Group 9 Escape/prison breach BRA Receiving stolen property	37.90% 6.90% 4mo. 3-9mo. N=1720	29.90% 4.90% 4mo. 3-9mo. N=1184	24.80% 5.20% 4mo. 3-9mo. N=650	20.40% 6.50% 4mo. 4-11mo. N=93	29.00% 3.20% 6mo. 3-12mo. N=31
Note: Shaded cells have fewer than 10 cases. Altogether, N equals 10,242 cases. See table content key on next page.					

Appendix F - HISTORICAL DATA FOR DRUG GRID

1/1/1996-6/30/2003

	Criminal History Score				
Ranking group Most common offenses	A	B	C	D	E
Group 1 Distribution w/a PWID w/a	50.00% 10.00% 60mo. 33-87mo. N=10		0.00% 33.30% 48mo. 36-60mo. N=3	N=0	N=0
Group 2 Distribution PWID	52.00% 8.80% 15mo. 10-24mo. N=1713	39.10% 6.50% 18mo. 12-36mo. N=713	24.70% 8.40% 24mo. 12-36mo. N=275	24.20% 6.10% 24mo. 16-30mo. N=33	0.00% 0.00% 20mo. 4-36mo. N=3
Group 3 Attempt Distribution Attempt PWID Obtain Narcotics by Fraud	62.20% 8.70% 12mo. 8-18mo. N=1791	48.10% 4.80% 14mo. 12-24mo. N=728	34.40% 5.30% 15mo. 12-24mo. N=262	41.40% 3.40% 12mo. 12-24mo. N=29	20.00% 0.00% 30mo. 9-48mo. N=5
Note: Shaded cells have fewer than 10 cases. Altogether, N equals 5565 cases.					
Table Content 1. Percent probation 2. Percent Split < 181 days 3. Median minimum sentence (old and new law) 4. 25th-75th percentile (middle 50% of Sentence) 5. Number of cases					

Appendix G -- INSTRUCTIONS ON SPLITS

Problems regarding the implementation of determinate sentences in the District of Columbia June 15, 2002

Dear Judges, Assistant United States Attorneys and members of the Defense Bar:

It has come to our attention that there is still some confusion with respect to the “new” determinate sentencing system. We write this memo to help clarify a few aspects of the system that seem to be the most confounding.

Calculating maximum prison time for non-Class A felonies

In the new determinate sentencing system [“new system”], there are two classes of felonies: Class A felonies and everything else. With the exception of armed carjacking, all of the Class A felonies carried a maximum penalty of life in the old indeterminate sentencing system [“old system”].¹⁷ All other felonies carried a maximum penalty of a term of years in the old system.

The distinction between Class A felonies and all other felonies determines, among other things, the maximum sentence the court can impose. For Class A felonies, the court can impose any sentence up to the statutory maximum sentence. For all other felonies, the court must deduct from the statutory maximum sentence the additional prison time that could be imposed (by the U.S. Parole Commission) if supervised release were to be revoked [“back up time”]. Keep in mind that back up time is not the same as the term of supervised release.

The total amount of time a person could serve in prison following revocation of supervised release is set out in column two of the following chart:

If the statutory maximum for the offense is	Then the maximum amount of imprisonment following revocation of supervised release [“back up time”] is
Life or the offense is specifically designated as a “Class A” felony	5 years
25 years or more, but less than life	3 years
5 years or more, but less than 25 years	2 years
Less than 5 years	1 year

In order to figure out the maximum prison sentence the court can impose, one should first determine what the statutory maximum for the offense is and then, for non-Class A felonies, deduct the amount of back up time from the statutory maximum. The balance is the maximum prison sentence the court can impose.

Thus, for example, aggravated assault has a statutory maximum penalty of 10 years. The back up time for aggravated assault is 2 years because the statutory maximum is more than 5 years but less than 25 years. Therefore, the maximum amount of prison time that the court can impose on the defendant on the day of sentencing is 8 years (the 10-year statutory maximum minus 2 years

¹⁷Class A felonies are: first and second degree murder, first degree sexual abuse, first degree child sexual abuse, kidnapping, armed carjacking, obstruction of justice, armed crimes of violence as defined in D.C. Code § 22-4501(f)(2001), the third conviction for a felony, and the third conviction for a violent felony.

of back up time). The worst case scenario for this defendant (from his or her point of view) is that the court imposes the maximum prison sentence of 8 years and then the defendant violates his/her subsequent supervised release and gets revoked by the United States Parole Commission for the entire 2 years. Even in this worst case scenario, the defendant cannot be legally imprisoned even one day more than the 10 year statutory maximum, which was the intent behind requiring the subtraction of the back up time.

Remember that subtracting the back up time from the statutory maximum to arrive at the maximum prison sentence that can be imposed is required for all felonies except Class A felonies.

Subtracting the back up time from the statutory maximum is the only way to arrive at the correct maximum prison sentence and the calculation is mandatory. A sentence greater than the statutory maximum minus the back up times is not a legal sentence. Thus, for example, assault on a police officer has a 5-year statutory maximum. The maximum prison sentence is therefore 3 years (the 5 year statutory maximum minus the 2 year back up time). The court cannot legally impose a prison sentence of 4 years or 5 years, even if the court suspends the sentence and places the defendant on probation.

For Class A felonies, the back up time is not subtracted from the statutory maximum. For example, aggravated assault while armed is a Class A felony and its statutory maximum penalty is now 30 years. While the back up term is 5 years, this term is not subtracted from the statutory maximum to arrive at the maximum prison sentence the court can impose. The maximum prison sentence the court can impose is the statutory maximum; thus, the judge can impose a sentence of up to 30 years.

The court may not impose a prison term greater than the statutory maximum for Class A felonies or the statutory maximum *minus* back-up time for all other felonies. The court is always free to impose less prison time, keeping in mind any applicable mandatory minimums. Once the court imposes its sentence, the defendant will serve at least 85% of it according to “truth-in-sentencing” principles. The defendant can earn good time to reduce his or her sentence, but s/he cannot reduce the sentence by more than 15%. As in the old system, the United States Bureau of Prisons, and not the court, administers the award of good time credits.

Finally, the amount of back up time for any given offense is set by D.C. Official Code § 24.403.1(b)(7). It is not a part of the sentence imposed by the judge. If the U.S. Parole Commission revokes supervised release, it can impose all or part of the back up time. If the Parole Commission imposes only part of the back up time, the balance is still available if the Parole Commission places the defendant on supervised release again in that case and it is again revoked.

Split sentences

Split sentences continue to pose problems in the new regime. A split sentence must have these elements: an imposed prison sentence, an imposed period of supervised release, suspension of some, but not all, of the prison time, suspension of all of the supervised release term and a period of probation, not to exceed 5 years, to follow release from the unsuspended portion of the prison time.

To impose a legal split sentence, the court should impose the prison sentence it wants the defendant to serve if probation is later revoked and impose the amount of supervised release that it must impose with that prison sentence. Then the court should suspend the amount of prison time it wants to suspend and suspend all the supervised release time. The court should then set an appropriate term of probation. The court must impose a term of supervised release because the law says that every felony sentence must be followed by an adequate period of supervised release. The court must suspend the imposed term of supervised release when it is imposing a split sentence because the felony sentence will not be completely served and the supervised release will not begin unless and until probation is revoked and the defendant serves the unsuspended portion of the original prison sentence (or some lesser sentence, if the judge chooses to reduce it upon

revocation).¹⁸ If the supervised release were not suspended, it would run concurrently with the probation and the court and the United States Parole Commission would both have jurisdiction in the same case at the same time. If the defendant violated, for example by testing positive for drugs, then anomalous results could occur with the judge deciding not to revoke probation but to order the defendant into an inpatient treatment program and the United States Parole Commission deciding to revoke supervised release and to send the defendant to prison.

An example of a legal split sentence in an aggravated assault case is “6 years in prison to be followed by 3 years supervised release, suspend all but 2 years in prison to be followed by 4 years probation.” In this example, the defendant will serve 2 years in prison and then be released to do 4 years of probation. If the defendant is successful on probation, then the defendant will never serve the remainder of the prison sentence (the 4 years s/he did not serve of the 6 year imposed sentence) and s/he will never serve the term of supervised release. If the defendant is unsuccessful and the court revokes probation, then the defendant will serve the remainder of the prison sentence (or less, if the court chooses) and, once s/he is released from prison, the defendant will serve the 3-year term of supervised release.

When calculating a split sentence, the initial prison sentence that the court imposes cannot be greater than the maximum prison sentence allowed for the offense. Splitting a sentence does not change the rules for how the maximum prison sentence must be calculated for non-Class A felonies. In the earlier example, we noted that a sentence of 4 years on a conviction of APO is illegal. It is similarly illegal to impose a sentence of 4 years, followed by a 3-year term of supervised release, suspend all but 1 year, followed by probation for 2 years. In this example, the defendant would initially serve only one year, but if the probation were later revoked, s/he could serve the remainder of the 4-year prison term imposed and then be subject to 2 years of back up time if s/he violates the conditions of his/her 3-year term of supervised release. This means that defendant could be required to serve 6 years in prison -- which is more than the 5-year statutory maximum. As discussed above, a defendant cannot be made to serve more time in prison than the statutory maximum penalty for that offense.

Minimum sentences (robbery)

Robbery is probably the most common offense for which there is a statutory minimum but there are others, including first and second degree burglary (5 years and 2 years, respectively) and second degree murder (20 years). See attached chart. Using robbery as an example, according to D.C. Official Code § 22-2801, the penalty for robbery is “not less than 2 years nor more than 15-years.” This language does not create a mandatory minimum, and probation is a possibility on a robbery conviction. However, if the court imposes a prison sentence, then the court must impose a sentence between 2 years (the statutory minimum) and 13 years (15 year statutory maximum minus 2 years back up time). If the judge wants to impose a prison sentence but does not want the defendant to serve 2 years, there are at least two options. The court could impose a split sentence: impose a sentence of 2 years to be followed by a 3-year term supervised release, suspend all but the amount of prison time the court wants the defendant to serve and impose a period of probation. If the court wants the defendant to serve 1 year or less, then the court can either suspend imposition of sentence (ISS) or impose a sentence and suspend execution of all of it (ESS), place the defendant on probation for any period up to 5 years, and require the defendant, as a condition of probation, to spend up to one year in custody, either at the D.C. Jail or at a halfway house. D.C. Code § 16-710(b-1)(2001, 2002 interim update service). These options are available for any offense that has a minimum that is not a mandatory minimum.

¹⁸Some believe that the court can, when splitting a sentence, suspend imposition of supervised release and impose the term of supervised release if and when probation is revoked. The majority view is that the term of supervised release must be imposed when the initial sentence is imposed, but that it must be suspended when all or part of the prison sentence is suspended and the defendant is placed on probation

Special Problems of Multiplication and Division

The statutory maximums for some felonies are tied to statutory maximums for other felonies, which can create some complications. The period of supervised release, the back up time, and the prison sentence that can be imposed are tied to the statutory maximum sentence for the offense of conviction and not to a percentage of time for the underlying offense. For example, a person convicted of accessory after the fact faces a maximum sentence up to one-half the maximum imprisonment to which the principal is subject. If the underlying offense is aggravated assault, the defendant would face a 5-year statutory maximum because 5 years is half of the 10-year statutory maximum for aggravated assault. However, even though the maximum prison time the court can impose for aggravated assault is 8 years (10 year statutory maximum minus 2 year back up time), the most prison time the court can impose on the defendant convicted of accessory after the fact (aggravated assault) is not 4 years, but 3 years (5 year statutory maximum minus 2 years of back up time). The period of supervised release is not 1 ½ years but 3 years (since the sentence for accessory after the fact, like the sentence for aggravated assault, is less than 25 years).

Offenses that enhance a sentence based on a percentage of another offense are calculated similarly. For example, a person convicted of a crime in a case in which repeat papers have been filed pursuant to § 22-1804 faces a maximum sentence of 1 ½ times the underlying offense penalty for a second conviction and 3 times the underlying offense penalty for a third or subsequent conviction. A defendant convicted a second time for aggravated assault with repeat papers is facing a 15-year statutory maximum (10-year statutory maximum times 1 ½) and, for a third or subsequent conviction, the defendant is facing a 30-year statutory maximum (10 years times 3). Again, even though the maximum prison time the court can impose for aggravated assault is 8 years, the most prison time the court can impose for a third conviction of aggravated assault with repeat papers is not 24 years, but 27 years (30 year statutory maximum minus 3 year back up time). Since the maximum prison sentence is greater than 25 years, the period of supervised release is not 4 ½ years, but 5 years.

We trust that this review of rules and principles will be helpful to everyone as we all struggle through implementation of the new system.

Appendix H -- STATUTORY ENHANCEMENTS

Enhancements that generally appear in the name of the offense:

Status of victim

(1)	Bias Related Crime	1 ½ x the upper number	D.C. Code § 22-3703
(2)	Citizen Patrol Victim	1 ½ x the upper number	D.C. Code § 22-3602
(3)	Senior Citizen Victim	1 ½ x the upper number	D.C. Code § 22-3601
(4)	Taxicab Drivers	1 ½ x the upper number	D.C. Code § 22-3751

Note: These enhancements are limited to enumerated crimes which are not consistent from section to section.

Drugs and guns

(1)	Drug-free zones	2 x the upper number	D.C. Code § 48-904.07a(b)
(2)	Drugs to minors	2 x the upper number	D.C. Code § 48-904.06
(3)	Gun-free zones	2 x the upper number	D.C. Code § 22-4502.01

Enhancements that generally do not appear in the name of offense. Government must file notice of intent to seek additional penalties.

Crimes of violence (aggravating circumstances)

(1)	Murder I	Up to life w/o release	D.C. Code § 22-2104, 104.01; or D.C. Code § 24-403.01(b-2)
(2)	Murder II	Up to life w/o release	D.C. Code § 24-403.01(b-2)
(3)	1° sex offenses	Up to life w/o release	D.C. Code § 22-3020 or D.C. Code § 24-403.01(b-2)
(4)	Other sex offenses	1 ½ x the upper number	D.C. Code § 22-3020
(5)	Armed carjacking	up to 40 years	D.C. Code § 24.403.01(b-2)

Repeat papers

(1)	2 or more drug offenses	2 x the upper number	D.C. Code § 48-904.08
(2)	1 prior like felony	1 ½ x the upper number	D.C. Code § 22-1804(a)
(3)	2 or more prior like felonies	3 x the upper number	D.C. Code § 22-1804(a)
(4)	2 or more prior felonies	up to 30 years	D.C. Code § 1804a(a)(1)
(5)	2 or more prior violent felonies	up to life w/o release	D.C. Code § 1804a(a)(2)

Appendix I -- STATUTORY MINIMUMS

Offense	Group Column ¹⁹		Statutory minimum not less than ²⁰	Group range
Arson	M6	A	12 months	18-60 months
APO w/a -- 2d offense or after conviction for felony	M6	C	12 months	30-72 months
APO -- 2d offense or after conviction for felony	M8	B	12 months	10-28 months
AWI kill, rob, poison or commit 1°, 2° or child sexual abuse after conviction for COV	M5	C	24 months	60-108 months
	M6	C	24 months	30-72 months
Bad checks of \$100+	M9	A	12 months	1-12 months
Bigamy	M8	A	24 months	6-24 months
BRA (Bail Reform Act)	M9	A	12 months	1-12 months
1° Burglary	M5	A	60 months	36-84 months
2° Burglary	M7	A	24 months	12-36 months
Child prostitution: abducting/harboring	M5	A	24 months	36-84 months
	M8	A	24 months	6-24 months
1° Child sexual abuse -- after conviction for COV	M3	C	84 months	114-204 months
AWI Commit 1° or 2° Child sexual abuse -- after conviction for COV	M6	C	24 months	30-72 months
<i>Enticing a child -- after conviction for COV</i>	M8	C	84 months	14-32 months
Corrupt influence	M9	A	6 months	1-12 months
Corrupt influence - athletics	M9	A	6 months	1-12 months
DP - explosives	M8	A	24 months	6-24 months

¹⁹ Some offenses have a statutory maximum only if there is a prior conviction. They have been placed in the column that represents the least number of criminal history points for that offense.

²⁰ The statutes give the minimum in years. We have converted them into months for ease of comparison.

Offense	Group Column		Statutory minimum of not less than	Group range
Drugs, maintaining place for	D2	A	60 months	12-30 months
False personation	M9	A	12 months	1-12 months
Grave robbing	M9	A	12 months	1-12 months
Impersonating a public official	M9	A	12 months	1-12 months
Molotov Cocktail	M9	A	12 months	1-12 months
Obscenity - 2nd offense	M9	B	6 months	3-16 months
Obstruction of Justice	M5	A	36 months	36-84 months
Possession of Implements of Crime - 2nd offense or after conviction for felony	M9	B	12 months	3-16 months
Prostitution offenses -- inducing, compelling, arranging, detaining, etc.	M9	A	12 months	1-12 months
Release, offense committed while on	M9	A	12 months	1-12 months
2° sexual abuse -- 2d offense	M5	C	84 months	60-108 months
Use of smoke screens	M9	A	12 months	1-12 months
Unlawful possession of a pistol -- 2nd offense	M8	B	12 months	10-28 months
Malicious water pollution	M9	A	12 months	1-12 months

APPENDIX J - AMENDMENTS TO THE PRACTICE MANUAL

This appendix presents the substantive amendments to the 2004 Practice Manual for the District of Columbia Voluntary Sentencing Guidelines.

AMENDMENTS

1. **Amendment:** A new Section 1.4, entitled “Use of Sentencing Guidelines Manual in effect on the Date of Sentencing,” is added. This new section states: “The sentencing court shall use the Sentencing Guidelines Manual in effect on the date that the defendant is sentenced. The 2005 Manual is effective on June 14, 2005. The amendments to the 2004 Manual, which are included in the 2005 Manual, are listed in Appendix J.”
2. **Amendment:** Section 1.5.1. (now §1.6.1) is amended by inserting the following after the second sentence: “The Commission will also make changes to the Practice Manual to clarify the sentencing guidelines or to create new policy rules where necessary. See Appendix J, which lists new amendments in the June 14, 2005 Practice Manual.”
3. **Amendment:** Section 1.5.1. (now §1.6.1) is amended by deleting the third sentence and inserting the following: “The Commission strongly encourages questions from criminal justice practitioners concerning the applicable sentencing range or options for individual cases under the Sentencing Guidelines. If you have a Guidelines application inquiry, please contact us at (202) 727-8822. The Commission provides information to assist in understanding and applying the Sentencing Guidelines. The information provided is not binding on the court or parties in any case. However, the issues raised by the inquiry may be used to inform subsequent revisions of the Practice Manual.”
4. **Amendment:** Section 2.1 is amended by adding the following sentence after the third sentence: “Appendix C-I is a chart that has all of the felonies that may be prosecuted in the District of Columbia arranged by D.C. Official Code (2001) cite.”
5. **Amendment:** Section 2.1 is amended by adding the following after the fourth paragraph: “Note: For accessory after the fact convictions, the top and bottom of the applicable guideline range for the underlying offense is reduced by one half. See Appendix C and C-I.”
6. **Amendment:** Section 2.2.2. is amended by deleting the first sentence in the second paragraph and replacing it with: “Out-of-state and federal convictions and

adjudications should be matched as closely as possible to D.C. Official Code offenses by following the rules in section 2.2.6.”

7. **Amendment:** Section 2.2.2 is amended by inserting the following before the “Note” regarding YRA sentences:

Note: When scoring prior convictions for accessory after the fact, score as follows when the underlying offense falls into the following boxes:

groups 1-3: 3 points
groups 4-5: 2 points
groups 6-9: 1 point

8. **Amendment:** Section 2.2.3 is amended by deleting the second sentence of the third paragraph and replacing it with: “If any prior felony conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the ten-year window, then all lapsed felony convictions are revived.”
9. **Amendment:** Section 2.2.3 is amended by deleting the last sentence of the fifth paragraph, which currently states “Only felony convictions within the 10-year window can revive earlier felony convictions.” In lieu of this sentence, the following sentence is inserted: “A prior felony conviction can revive an earlier felony conviction only if the more recent conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the 10-year window. See Section 7.27.”
10. **Amendment:** Section 2.2.6 is amended by deleting the entire section and replacing it with:

Convictions and adjudications for federal and out-of-state offenses are scored like the closest comparable D.C. Official Code offenses. To determine the closest comparable D.C. Official Code offense:

1. Look at the name of the offense;
2. Examine the statutory elements of the offense;
3. Choose the DC offense that most closely matches the out-of-state offense. Score the out-of-state offense for criminal history purposes just as the most closely matched DC offense would be scored (for example, an out-of-state offense that most closely matches ADW is scored as 2 points, just as is a prior DC ADW conviction).
4. If there are more than one possible DC statutes that "closely match" the out-of-state offense, select the least severe DC statute, whether that statute is a misdemeanor or a lesser felony. (In some cases, the

least severe DC statute might actually be a felony even if the out-of-state offense is a misdemeanor. What is most important is how DC classifies the statute.) Importantly, do not look to the underlying conduct of the prior offense to select the offense that most closely matches; instead compare the elements of the DC and out-of-state offenses.

5. If no comparable DC statute can be found based on the above rules, then the following default rules apply:

- a. Apply one point for all convictions that are classified as felonies by the other jurisdiction;
- b. Apply $\frac{1}{2}$ point for all juvenile adjudications that are classified as felonies by the other jurisdiction;
- c. Apply $\frac{1}{4}$ point for all convictions that are classified as misdemeanors by the other jurisdiction.
- d. Exception: If defense counsel can demonstrate to the sentencing Court that the conduct criminalized by the other jurisdiction is not currently classified as criminal conduct in DC, then the Court may delete or remove any criminal history points applied by CSOSA for such an offense.

Note: The same lapse rules apply to out-of state convictions as to D.C. convictions. Thus, a revived out-of-state felony should be scored as $\frac{1}{2}$ point under these default rules, and misdemeanor convictions and juvenile adjudications would not be scored at all

6. If the government determines that the criminal history score for the out-of-state conviction under-represents the severity of the offense, then the government may seek a criminal history departure. This departure principle applies only to out-of-state convictions. If the Court concludes by a preponderance of evidence that the underlying conduct for the out-of state conviction most closely matches a more severe DC offense, then the Court may adjust the criminal history score by applying the same number of criminal history points applicable to the more severe DC offense. In making this determination, the burden of proof is on the government to establish that the conduct for the out-of state conviction more closely matches a more severe DC offense. The Court should apply this departure principle only if it determines that the conduct of conviction, as opposed to alleged conduct or conduct relating to other offenses, more closely matches the more severe DC offense.

While the parties may not normally bargain over the criminal history score, the parties may agree that the Court should apply a higher and specific value of points as the appropriate score for an out-of state conviction. This

would help create certainty at the time of a plea and would reduce resources necessary to litigate the appropriate criminal history score when it is contested. If agreed upon by the parties, CSOSA and the Court should accept this score when calculating criminal history. This exception to the general rule prohibiting bargaining over criminal history score applies only to out-of-state convictions and is the **ONLY EXCEPTION** to the general prohibition.

Note: In rare cases, the sentence the court imposed may assist us in determining the applicable statute of conviction—in the foreign jurisdiction. For example, in North Carolina, "breaking and entering" includes both a misdemeanor (simple breaking or entering) and a felony (intent to commit any felony or larceny). If a defendant has a prior conviction for "breaking or entering" in North Carolina, and received a 5-year sentence for that conviction, the prior conviction must be a felony since the maximum penalty for the misdemeanor is 120 days for persons with an extensive criminal history.

Note: Figuring out exactly which D.C. offense most closely resembles an out-of-state offense may not be necessary if the number of criminal history points assigned to it would be the same regardless of whether it comes closer to one offense or another.

Note: Figuring out the exact number of criminal history points is not necessary where a defendant has six or more points (e.g., two prior violent felonies; three prior mid-level felonies; six prior low-level felonies or a combination of these and misdemeanors that add up to six or more points).

The Commission has developed a preliminary list of common Maryland offenses that are comparable to D.C. offenses. This list is available at www.sentencing.dc.gov. In the coming months, the Commission will work on comparing additional Maryland, Virginia and Federal offenses to D.C. offenses. It will then work on comparability for common offenses in other jurisdictions. In the meantime, the Commission strongly urges practitioners and judges to call for assistance regarding comparability of specific offenses. Such a call is likely to be more efficient than trying to decide comparability at the time of sentencing in a given case.

- 11. Amendment:** A new Section 2.2.8 is inserted, which is entitled "Scoring Convictions/Adjudications for Offenses Where Sentencing Severity has Changed Since the Commission of the Prior Offense." This new section states:

Convictions and adjudications for offenses that were classified as misdemeanors when the prior offense occurred but were subsequently reclassified as felonies should be scored as misdemeanors. For example, distribution of marijuana was a misdemeanor until June 8, 2001, when it was reclassified as a felony in some circumstances. Any distribution of

marijuana conviction for an offense committed before June 8, 2001, therefore, should be scored as a misdemeanor.

Following this section, a footnote is inserted that states:

Distribution of marijuana was a misdemeanor under all circumstances before June 8, 2001, when it was reclassified as a felony unless the defendant has not been previously convicted of distributing or possessing with intent to distribute any controlled substances and the amount of marijuana was ½ pound or less. D.C. Official Code § 48-904.01(a)(2)((B). Carrying a pistol without a license was a misdemeanor before August 20, 1994, unless the person had previously been convicted of CPWL or of any felony. Since then, it has also been a felony to carry a pistol outside a person's home or place of business or on land possessed by the person. D.C. Official Code § 22-4504. An attempt to commit a crime of violence was a misdemeanor before August 20, 1994, when it was reclassified as a 5-year felony. D.C. Official Code § 22-1803. Attempt robbery, however, has been classified as a 3-year felony since the Code was enacted in 1901. D.C. Official Code § 22-2802.

- 12. Amendment:** A new Section 2.2.10, entitled "Military and Foreign Convictions," is inserted. This new section states: "Convictions resulting from military offenses are scored if imposed by a general or special court martial. Convictions imposed by a summary court martial or Article 15 proceeding are not scored. Convictions resulting from a foreign conviction are not scored."
- 13. Amendment:** A new Section 2.2.11 is inserted, which is entitled "Convictions for Traffic Offenses." This new section states: "Convictions for traffic offenses are not scored. However, convictions for Negligent (Vehicular) Homicide, D.C. Official Code § 50-2203.01, and Fleeing Law Enforcement, D.C. Official Code 50-2201.05, are criminal offenses and are scored. See Appendix C and C-I."
- 14. Amendment:** Page 4-1 is amended by inserting the following prior to the last paragraph: "The court should apply only one of two or more enhancements. In such a case, the court may, but need not, select the enhancement that raises the top of the range by the greatest percentage."
- 15. Amendment:** Page 4-1 is amended by inserting the following after the last paragraph: "A conviction for accessory after the fact reduces by one-half both the top and the bottom of the prison range available in the box applicable to the underlying offense."

- 16. Amendment:** Page C-3 is amended by adding Attempt Crime of Violence While Armed. The offense severity group for this offense is “Same group as unarmed completed offense.”
- 17. Amendment:** Page C-3 is amended by changing the offense severity group for assault with intent to commit any other felony from Master Group 6 to Master Group 8.
- 18. Amendment:** Page C-3 is amended by adding Assault with Intent to Commit Mayhem as Master Group 7.
- 19. Amendment:** Page C-4 is amended by dividing Burglary while armed into first degree burglary while armed (Master Group 3) and second degree burglary while armed (Master Group 6).
- 20. Amendment:** Page C-6 is amended by adding Cruelty to Animals as Master Group 9.
- 21. Amendment:** Page C-8 is amended by adding Fleeing Law Enforcement as Master Group 8.
- 22. Amendment:** Page C-9 is amended by adding Illegal Dumping as Master Group 9.
- 23. Amendment:** Page C-9 is amended by adding Identity Theft as Master Group 8.
- 24. Amendment:** Page C-12 is amended by adding Possession of Unregistered Firearm, Second Offense as Master Group 9.
- 25. Amendment:** Page C-17 is amended by inserting Taxicab Driver enhancement.